

HOUSE BILL REPORT

ESHB 2654

As Passed House:

February 10, 1996

Title: An act relating to citations under the Washington industrial safety and health act.

Brief Description: Limiting WISHA citations when employers maintain adequate safety training, equipment, rules, and monitoring.

Sponsors: By House Committee on Commerce & Labor (originally sponsored by Representatives Clements, McMorris, Chandler, Backlund, Thompson and Johnson).

Brief History:

Committee Activity:

Commerce & Labor: 1/24/96, 1/31/96 [DPS].

Floor Activity:

Passed House: 2/10/96, 68-28.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives McMorris, Chairman; Hargrove, Vice Chairman; Thompson, Vice Chairman; Conway, Assistant Ranking Minority Member; Cairnes; Cody; Fuhrman; Goldsmith and Horn.

Minority Report: Do not pass. Signed by 2 members: Representatives Romero, Ranking Minority Member; and Cole.

Staff: Chris Cordes (786-7117).

Background: The Department of Labor and Industries administers and enforces the Washington Industrial Safety and Health Act (WISHA). The act directs the department to adopt rules governing safety and health standards for workplaces covered by the act.

Department representatives are authorized to inspect and investigate workplaces at reasonable times and in a reasonable manner. If the department representative believes, after an investigation, that a requirement of WISHA, the rules adopted under WISHA, or the conditions of an order granting a variance have been violated, the department will issue a citation to the employer. Employers receiving citations are

subject to the civil penalties provided in WISHA. Citations may be appealed to the Board of Industrial Insurance Appeals.

Washington is a "state plan state" under the federal Occupational Safety and Health Act (OSH Act). As a state plan state, Washington is authorized to assume responsibility for occupational safety and health in the state. To maintain its status, Washington's safety and health standards must be at least as effective as those standards adopted or recognized under the OSH Act.

Both the federal courts under the OSH Act and the Board of Industrial Insurance Appeals under WISHA permit employers to raise "unpreventable employee misconduct" as an affirmative defense to a citation when the action or practice of an employee has led to the safety or health violation. The elements of the defense are (1) the employer has work rules designed to prevent the violation; (2) the work rules are adequately communicated to its employees; (3) the employer has taken steps to discover violations; and (4) the employer has effectively enforced the rules when violations are discovered.

Summary of Bill: The Department of Labor and Industries may not issue a citation to an employer for a violation of a safety or health standard under the Washington Industrial Safety and Health Act if the employer demonstrates all of the following:

- (1) employees were provided with safety training and equipment complying with WISHA standards.
- (2) the employer has a written accident prevention program and safety rules designed to prevent safety and health violations, and the program and rules were adequately communicated to employees, including conducting safety meetings.
- (3) the employer takes reasonable measures to discover violations of the safety rules and effectively enforces the rules when violations are discovered.
- (4) the failure of employees to observe the safety rules led to the violation.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: If an employer has adhered to all requirements of the law relating to his or her safety program, then the employer should not be responsible for a violation that occurs because an employee breaks a safety rule. No matter how well trained

employees are, there will always be someone breaking a rule and the employer cannot watch employees all the time. It does not improve safety to cite employers for something over which they have no control. Putting this citation defense in statute will make it clear to employers the standard that they are expected to meet.

Testimony Against: For the bill to meet the same standard as OSH Act, it should be clarified that an employer's safety program is effective in practice. However, "effective in practice" is a difficult standard to meet and difficult to verify. The bill could open the door to abuse. If this defense approach is taken, all employers should be required to have labor-management committees to improve communication.

Testified: (In favor) Representative Jim Clements, prime sponsor; Chris Cheney and Mike Gempler, Washington Growers League; John Waring, Farm Bureau; Jim Halstrom, Washington Horticultural Association; and Tom Kwesiak, Building Industry Association of Washington. (Opposed) Jeff Johnson, Washington State Labor Council. (With concerns) Frank Leuck, Department of Labor and Industries.